

FILED

SEP 30 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DONALD LYNN ALLRED,

Plaintiff,

vs.

STATE OF MONTANA, OFFICE OF
PUBLIC DEFENDERS, ED
CORRIGAN, BRENT GETTY, and
VICKI FRAZIER,

Defendants.

CV 13-160-M-DWM-JCL

ORDER

Plaintiff Donald Lynn Allred brings this action pursuant to 42 U.S.C. § 1983. In Count I of his Complaint, Mr. Allred contends that Defendants the State of Montana, the Montana Office of the State Public Defender, Flathead County Attorney Ed Corrigan, and Attorneys Brent Getty and Vicki Frazier, employed by the Montana Office of Public Defenders, are civilly liable to him for violating his right to effective assistance of counsel, in violation of the Sixth Amendment to the United States Constitution.

As Mr. Allred was a prisoner proceeding *in forma pauperis* at the time this action was filed, the matter was referred to Magistrate Judge Lynch for screening pursuant to 28 U.S.C. §§ 1915, 1915A. Judge Lynch issued Findings and

Recommendations regarding Mr. Allred's Complaint on August 15, 2013. Judge Lynch recommends that Mr. Allred's Complaint be dismissed with prejudice. Pursuant to 28 U.S.C. § 636(b)(1), written objections to Judge Lynch's Findings and Recommendations were due September 3, 2013. No objections were filed.

The Court reviews the Findings and Recommendation entered by a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After a review of Judge Lynch's Findings and Recommendation, I find no clear error. The State of Montana and the Montana Office of the State Public Defender are immune from suits by an individual for monetary damages under the Eleventh Amendment to the United States Constitution. *Hans v. Louisiana*, 134 U.S. 1, 13 (1890). Flathead County Attorney Ed Corrigan is entitled to prosecutorial immunity for his actions at issue in this matter. *See Kalina v. Fletcher*, 522 U.S. 118, 131 (1997). Mr. Getty and Ms. Frazier, when performing their duties as attorneys employed by the Montana Office of the State Public Defender, are not state actors within the ambit of an action brought under 42 U.S.C. § 1983. *See Miranda v. Clark County*, 319 F.3d 465, 468 (9th Cir. 2003) (*en banc*). In addition to lacking a proper defendant, Mr. Allred's Complaint

challenges ongoing criminal proceedings and is accordingly barred. *Younger v. Harris*, 401 U.S. 37, 45 (1971).

Based on the foregoing, IT IS ORDERED that Judge Lynch's Findings and Recommendations (doc. 5) are ADOPTED IN FULL. The petition is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court shall enter by a separate document judgment in favor of Respondents and against Petitioner and shall close this case.

DATED this 25th day of September 2013.

A handwritten signature in black ink, appearing to read 'DMolloy', is written over a horizontal line. A large, sweeping checkmark is drawn over the signature and extends upwards and to the right.

Donald W. Molloy, District Judge
United States District Court